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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/520,936  | 12/19/2005  | Peter Moeller-Jensen | P70330USD           | 4770             |
| 136 7590 01/07/2009<br>JACOBSON HOLMAN PLLC<br>400 SEVENTH STREET N.W.<br>SUITE 600<br>WASHINGTON, DC 20004 |             |                      |                     |                  |
| EXAMINER<br>SCHELL, LAURA C   |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3767  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 01/07/2009  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,936

**Applicant(s)**

MOELLER-JENSEN ET AL.

**Examiner**

LAURA C. SCHELL

**Art Unit**

3767

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3.6-13, 15-17 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3.6-13, 15-17, 25, 28-31 is/are allowed.
- 6) ☒ Claim(s) 23, 24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Massalsky (DE585360). Massalsky discloses an irrigation system (Figs. 1-4) comprising a reservoir (reservoir would be attached to tubes p and n) for irrigating liquid, a probe (b) for arrangement in a user, a conduit (n) for conducting the irrigating liquid from the reservoir to the probe, a fixation member (d) including an inflatable cuff for fixation of the probe in the user, a pump (the pump is being interpreted as including portions u, t, r, s and h as these all appear to be what conducts the pump pressure to the different conduits) for pumping gas into the reservoir to transfer the irrigating liquid from the reservoir to the probe (it appears that air is pumped by u through t into r, through h and down through conduit p which displaces the irrigating fluid up through n, as evidenced by the arrows at the ends of p and n, and the fluid in n is then introduced to g where it is directed by controller k) and a control unit (k) which may be set in at least two different positions (Fig. 4 discloses that K may be set such that fluid from g flows into i, or it may be set such that fluid from g flows through k and into the second part of g and thus into the probe b) that include a cuff inflating position (when fluid flows

through i) and a liquid transferring position (when fluid flows through g to the probe b), said pump being a manually operated pump (Fig. 1 discloses it would be used by hand) which is connected to or integral with the control unit (the pump is connected to k via g).

In reference to claim 27, Massalsky discloses that the pump is a bulb pump (Fig. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falconer (US 2003/0073974). Falconer discloses the device substantially as claimed including an irrigation system comprising a reservoir (1) for irrigating liquid (abstract), a probe (7) for arrangement in a user, a conduit (6) for conducting the irrigating fluid from the reservoir to the probe, a fixation member including an inflatable

cuff (Figs. 1 and 4, 14) for fixation of the probe in the user, a pump (5) for pumping gas into the reservoir to transfer the irrigating liquid from the reservoir to the probe and a control unit which may be set in at least a cuff inflating position and a liquid transferring position (the term "control unit" is very broad and can be interpreted as anything that controls. Therefore, the examiner is interpreting the clamp 15 in Fig. 1 as the control unit, as when it is activated or in the clamped position, it prevents fluid flow and prevents the cuff from inflating and when it is not activated or not clamping, it allows both liquid transferring and cuff inflation. Therefore the control unit 15 may be set in an inactive position (clamped position) as well as a cuff inflating position and a liquid transferring position, as these two positions are the same when 15 is open), said pump being deactivated when the control unit is set in a first position and being activated automatically when the control unit is set in a second position (when the clamp/tap (15) is in the open position, the air that has been pumped into the container 2 will automatically activate a pumping of the liquid from the reservoir 1 out through the conduit 6 and into the probe. However, when the clamp/tap (15) is in the closed position, the pump is deactivated as the air that has been pumped into the container 2 will not be able to force the liquid past the control unit/clamp/tap 15 and into the probe for use). Falconer, however, does not disclose that the pump is powered by an external device, but instead is manually powered by hand (Figs. 1 and 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Falconer's pump such that it would be powered by an external device, since it has been held that broadly providing a mechanical or automatic means to replace

manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

***Allowable Subject Matter***

Claims 3, 6, 7-12, 13, 15-17, 25, 28-31 allowed.

The following is a statement of reasons for the indication of allowable subject matter: Independent claim 3 is allowed because the subject matter that could not be found is a cuff being inflated by a gas, not by one of the irrigating fluids, and the pump being directly connected or integral with the control unit, in combination with the other elements of the claim.

Independent claim 6 is allowed because the subject matter that could not be found is a cuff which is inflated by gas, not by one of the irrigating fluids, and the control unit which may be set in three different positions, in combination with the other elements of the claim.

Independent claim 7 as well as dependent claims 8-12 are allowed because the subject matter that could not be found is a control unit comprised of a first disc, second disc and intermediate disc, the intermediate disc being rotatable with respect to the first and second discs, the rotation setting the cuff inflating and liquid transferring positions, in combination with the other elements of the claims.

Independent claim 13 as well as dependent claims 15-17 are allowed because the subject matter of dependent claim 14, which was not found, was added to independent claim 13, in combination with the other elements of the claims.

Independent claim 25 and dependent claim 28 are allowed because the subject matter that could not be found is a control unit capable of being set in two different positions, the positions including a cuff inflating position and the separate second position being a liquid transferring position, as well as the arrangement of the three tubes connected to the pumping element, in combination with the other elements of the claims.

Independent claim 29 and dependent claims 30 and 31 are allowed because the subject matter that could not be found is the arrangement of the five canals within the cylindrical element and the arrangement of the five canals in relation to each other, in combination with the other elements of the claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 23, 24, 26 and 27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA C. SCHELL whose telephone number is (571)272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Schell/  
Examiner, Art Unit 3767

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763